IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

P.I.L. NO. 39 OF 2003

(WRIT PETITION NO. 7308 OF 2002)

1. Bombay Environment Action Group

2. Sameer Mehta .. Petitioners

V/s

1. State of Maharashtra through
   (i) Secretary, Urban Development Dept.
   (ii) Secretary, Revenue & Forest Dept.

2. Mahabaleshwar Municipal Council
3. Panchgani Municipal Council
4. Collector, Satara
5. Union of India
   through the Secretary,
   Ministry of Environment & Forest

6. M/s Desai Brothers Ltd., Pune
7. J.S. Billimoria, Pune
8. Avinash Bhosale, Pune
9. M/s Area Developers Pvt. Ltd., Pune
9A. Mahabaleshwar Hotel Owners' Association, Mahabaleshwar

10. Town Planning & Valuation Department
    through
    (i) Director of Town Planning,
        State of Maharashtra, Pune

    (ii) Deputy Director of Town Planning,
         Pune

    (iii) Asstt. Director of Town Planning,
          Satara

11. Hotel Arya (Vijay Choksi) Property,
    Mahabaleshwar

12. Hotel Rajesh, Mahabaleshwar
13. Table Land Vyapari Association,
    Panchgani. .. Respondents

Mr.D.J. Khambata with Mr.Riyaz Chagla, Ms.Mallika Iyer, Ms.Seeta Kapadia i/b Federal & Rashmikant for the Petitioner.

Mr.S.R. Nargolkar, A.G.P. for Respondents No.1, 4 and 10.

Mr.A.V. Anturkar with Mr.Ganesh Gole for Respondent No.2.

Mr.J. Reis with Mr.Y.M. Choudhari for Respondent No.3.

Mr.B.A. Desai, Additional Solicitor General with Mr.Amjad Sayed and Mr.Engineer for Respondent No.5.

Dr.Veerendra V. Tulzapurkar with Mr.Anuj Bhasme i/b Wadia Ghandy & Co. for Respondent No.7.

Dr.Veerendra V. Tulzapurkar with Mr.T. Subramaniam i/b Ms. Chandana Salgaoncar for Respondents No.8 and 9.

None present for Respondent No.9A.

Mr.P.K. Samdani i/b Haresh Mehta & Co. for Respondent No.11.

Mr.Ranjit Shetty i/b PDS Legal for Respondent No.12.

Mr.Uday Warunjikar for Respondent No.13.

Other Respondents are served.

WITH

CIVIL APPLICATION NO. 2244 OF 2004

Bombay Environment Action Group
and Anr. .. Applicants

V/s

1. State of Maharashtra through
   (i) Secretary, Urban Development Dept.
   (ii) Secretary, Revenue & Forest Dept.

2. Mahabaleshwar Municipal Council
3. Panchgani Municipal Council
4. Collector, Satara
5. Union of India
   through the Secretary,
   Ministry of Environment & Forest

6. M/s Desai Brothers Ltd., Pune
7. J.S. Billimoria, Pune
8. Avinash Bhosale, Pune
9. M/s Area Developers Pvt. Ltd., Pune
10. Maharashtra Pollution Control Board

11. Town Planning & Valuation Department through
    (i) Director of Town Planning, State of Maharashtra, Pune

    (ii) Deputy Director of Town Planning, Pune

    (iii) Asstt. Director of Town Planning, Satara

12. Hotel Arya (Vijay Choksi) Property, Mahabaleshwar

13. Hotel Rajesh, Mahabaleshwar
14. Maharashtra Jivan Pradhikaran .. Respondents

Mr.D.J. Khambata with Mr.Riyaz Chagla, Ms.Mallika Iyer, Ms.Seeta Kapadia i/b Federal & Rashmikant for the Petitioner.

Mr.S.R. Nargolkar, A.G.P. for Respondents No.1, 4 and 11.

Mr.A.V. Anturkar with Mr.Ganesh Gole for Respondent No.2.

Mr.J. Reis with Mr.Y.M. Choudhari for Respondent No.3.

Mr.B.A. Desai, Additional Solicitor General with Mr.Amjad Sayed and Mr.Engineer for Respondent No.5.

Mr.Veerendra Tulzapurkar with Mr.Anuj Bhasme i/b Wadia Ghandy & Co. for Respondent No.7.

Dr.Veerendra V. Tulzapurkar with Mr.T. Subramaniam i/b Ms. Chandana Salgaoncar for Respondent No.8.

Mr.P.K. Samdani i/b Haresh Mehta & Co. for Respondent No.12.

Mr.Ranjit Shetty i/b PDS Legal for Respondent No.13.

Mrs.Sadhana Mahashabde for Respondent No.10.

None for Respondent No.14.

WITH

CIVIL APPLICATION NO.11 OF 2006

Hotel Pratap Heritage & Anr. .. Applicants

V/s

Bombay Environmental Action Group & Ors... Respondents

Mr.S.M. Gorwardkar for the Applicants.

Mr.S.R. Nargolkar, A.G.P. for the State.

Mr.D.J. Khambata with Mr.Riyaz Chagla, Ms.Mallika Iyer, Ms.Seeta Kapadia i/b Federal & Rashmikant for Respondents No.1 and 2.

WITH

CIVIL APPLICATION NO.12 OF 2006

Hotel Apsara .. Applicant

V/s

Bombay Environmental Action Group & Ors... Respondents

Mr.S.M. Gorwardkar for the Applicant.

Mr.S.R. Nargolkar, A.G.P. for the State.

Mr.D.J. Khambata with Mr.Riyaz Chagla, Ms.Mallika Iyer, Ms.Seeta Kapadia i/b Federal & Rashmikant for Respondents No.1 and 2.

WITH

CIVIL APPLICATION NO. 14 OF 2006

Panorama Resort Pvt. Ltd. & Ors. .. Applicants

V/s

State of Maharashtra & Ors. .. Respondents

Mr.D.R. Shah for the Applicants

Mr.S.R. Nargolkar, A.G.P. for the State.

Mr.D.J. Khambata with Mr.Riyaz Chagla, Ms.Mallika Iyer, Ms.Seeta Kapadia i/b Federal & Rashmikant for the Bombay Environment Action Group.

WITH

CIVIL APPLICATION NO. 15 OF 2006

Bombay Environment Action Group & Anr. .. Petitioners

V/s

State of Maharashtra & Ors. .. Respondents

And

Tukaram Ramchandra Ghatge .. Applicants

Mr.G.N. Salunke for the Applicants

Mr.S.R. Nargolkar, A.G.P. for the State.

Mr.D.J. Khambata with Mr.Riyaz Chagla, Ms.Mallika Iyer, Ms.Seeta Kapadia i/b Federal & Rashmikant for the Petitioners.

WITH

CIVIL APPLICATION NO.16 OF 2006

Sandesh V. Ranade .. Applicant

V/s

Bombay Environmental Action Group & Ors... Respondents

Mr.Jagdish Reddy i/b Mrs.Suhasini Mutalik for the Applicant.

Mr.S.R. Nargolkar, A.G.P. for the State.

Mr.D.J. Khambata with Mr.Riyaz Chagla, Ms.Mallika Iyer, Ms.Seeta Kapadia i/b Federal & Rashmikant for the Bombay Environment Action Group.

WITH

CIVIL APPLICATION NO. 17 OF 2006

Sandesh V. Ranade .. Applicant

V/s

Bombay Environment Action Group & Ors. .. Respondents

Mr.Vimal Tiwari for the Applicant.

Mr.S.R. Nargolkar, A.G.P. for the State.

Mr.D.J. Khambata with Mr.Riyaz Chagla, Ms.Mallika Iyer, Ms.Seeta Kapadia i/b Federal & Rashmikant for Respondents No.1 and 2.

CIVIL APPLICATION NO. 68 OF 2005

Mosque Trust .. Applicant

V/s

Bombay Environment Action Group & Ors. .. Respondents

Mr.Sugandh B. Deshmukh for the Applicant.

Mr.D.J. Khambata with Mr.Riyaz Chagla, Ms.Mallika Iyer, Ms.Seeta Kapadia i/b Federal & Rashmikant for the Bombay Environment Action Group.

Mr.S.R. Nargolkar, A.G.P. for the State.

WITH

CIVIL APPLICATION NO. 73 OF 2005

Sahebrao Shivram Biramane .. Applicant

V/s

Bombay Environment Action Group & Ors. .. Respondents

Mr.Sugandh B. Deshmukh for the Applicant.

Mr.D.J. Khambata with Mr.Riyaz Chagla, Ms.Mallika Iyer, Ms.Seeta Kapadia i/b Federal & Rashmikant for the Bombay Environment Action Group.

Mr.S.R. Nargolkar, A.G.P. for the State.

WITH

CIVIL APPLICATION NO. 3 OF 2006

Bombay Environment Action Group & Ors. .. Petitioners

V/s

State of Maharashtra & Ors. .. Respondents

And

Mrs.Taru Mahendra Vaidya .. Applicant

Mr.Dilip Bodake for the Applicant.

Mr.D.J. Khambata with Mr.Riyaz Chagla, Ms.Mallika Iyer, Ms.Seeta Kapadia i/b Federal & Rashmikant for the Petitioners.

Mr.S.R. Nargolkar, A.G.P. for the State.

CIVIL APPLICATION NO. 62 OF 2005

Mrs. Vijaymala Bajirao Desai .. Applicant

V/s

Bombay Environment Action Group & Ors. .. Respondents

Mr.R.G. Ketkar for the Applicant.

Mr.D.J. Khambata with Mr.Riyaz Chagla, Ms.Mallika Iyer, Ms.Seeta Kapadia i/b Federal & Rashmikant for Respondents No.1 and 2.

Mr.S.R. Nargolkar, A.G.P. for the State.

WITH

CIVIL APPLICATION NO. 67 OF 2006

Bombay Environmental Action Group & Ors... Petitioners

V/s

State of Maharashtra & Ors. .. Respondents

And

Krishnada Premji Mistry & Anr. .. Applicants

Mr.Uday Warunjikar for the Applicants.

Mr.D.J. Khambata with Mr.Riyaz Chagla, Ms.Mallika Iyer, Ms.Seeta Kapadia i/b Federal & Rashmikant for the Applicants.

Mr.S.R. Nargolkar, A.G.P. for the State.

WITH

CIVIL APPLICATION NO. 19 OF 2006

Pitamber Basharam Pahuja .. Applicant

V/s

State of Maharashtra & Ors. .. Respondents

Mr.N.B. Patil for the Applicant.

Mr.D.J. Khambata with Mr.Riyaz Chagla, Ms.Mallika Iyer, Ms.Seeta Kapadia i/b Federal & Rashmikant for the Bombay Environment Action Group.

Mr.S.R. Nargolkar, A.G.P. for the State.

WITH

CIVIL APPLICATION NO. 29 OF 2006

Bombay Environmental Action Group & Ors... Petitioners

V/s

State of Maharashtra & Ors. .. Respondents

And

Tukaram Amruta More & Ors. .. Applicants

Mr.P.K. Dhakephalkar with Mr.Dilip Bodake for the Applicants.

Mr.D.J. Khambata with Mr.Riyaz Chagla, Ms.Mallika Iyer, Ms.Seeta Kapadia i/b Federal & Rashmikant for the Petitioners.

Mr.S.R. Nargolkar, A.G.P. for the State.

WITH

CIVIL APPLICATION NO. 39 OF 2006

Bombay Environmental Action Group & Ors... Petitioners

V/s

State of Maharashtra & Ors. .. Respondents

And

Prakash Kashinath Sakpal .. Applicant

Mr.P.K. Dhakephalkar with Mr.Dilip Bodake for the Applicants.

Mr.D.J. Khambata with Mr.Riyaz Chagla, Ms.Mallika Iyer, Ms.Seeta Kapadia i/b Federal & Rashmikant for the Petitioners.

Mr.S.R. Nargolkar, A.G.P. for the State.

WITH

CIVIL APPLICATION NO. 56 OF 2006

Bombay Environmental Action Group & Ors... Petitioners

V/s

State of Maharashtra & Ors. .. Respondents

And

Sou. Kalawati Anand Arde & Ors. .. Applicants

Mr.P.K. Dhakephalkar with Mr.Dilip Bodake for the Applicants.

Mr.D.J. Khambata with Mr.Riyaz Chagla, Ms.Mallika Iyer, Ms.Seeta Kapadia i/b Federal & Rashmikant for the Petitioners.

Mr.S.R. Nargolkar, A.G.P. for the State.

WITH

CIVIL APPLICATION NO. 64 OF 2006

Dilip Narayan Gadekar & Ors. .. Applicants

V/s

Bombay Environmental Action Group & Ors... Respondents

Mr.Sugandh Deshmukh for the Applicants.

Mr.D.J. Khambata with Mr.Riyaz Chagla, Ms.Mallika Iyer, Ms.Seeta Kapadia i/b Federal & Rashmikant for Respondents No.1 and 2.

Mr.S.R. Nargolkar, A.G.P. for the State.

WITH

CIVIL APPLICATION NO. 72 OF 2006

Bombay Environmental Action Group & Ors... Petitioners

V/s

State of Maharashtra & Ors. .. Respondents

And

Arun Shankar Bawalekar & Ors. .. Applicants

Mr.P.K. Dhakephalkar with Mr.Dilip Bodake for the Applicants.

Mr.D.J. Khambata with Mr.Riyaz Chagla, Ms.Mallika Iyer, Ms.Seeta Kapadia i/b Federal & Rashmikant for the Petitioners.

Mr.S.R. Nargolkar, A.G.P. for the State.

WITH

CIVIL APPLICATION NO. 3185 OF 2005

Kasam R. Waikar & Anr. .. Applicants

V/s

Bombay Environmental Action Group & Ors... Respondents

Mr.Tanaji Mahatugade for the Applicants.

Mr.D.J. Khambata with Mr.Riyaz Chagla, Ms.Mallika Iyer, Ms.Seeta Kapadia i/b Federal & Rashmikant for Respondent No.1.

Mr.S.R. Nargolkar, A.G.P. for the State.

CORAM : H.L. GOKHALE &
J.P. DEVADHAR, JJ.

DATE OF RESERVING THE JUDGMENT : 6th October 2006

DATE OF PRONOUNCING THE JUDGMENT : 19th October 2006

JUDGMENT: (Per H.L. Gokhale, J.)

1. The 1st Petitioner herein is a Society registered under the Societies Registration Act and is interested in the protection of environment in various parts of the country and particularly in the State of

Maharashtra. It has taken steps from time to time for that purpose including filing proceedings in this High Court as well as in the Supreme Court. The 2nd Petitioner is a member of the 1st Petitioner. The present petition is concerning the protection of environment in the Mahabaleshwar and Panchgani twin hill stations.

2. (i) The 1st Respondent to this petition is the State of Maharashtra through the Secretary, Urban Development Department as well as the Secretary, Revenue & Forests Department. Respondent No.10 is the Town Planning and Valuation Department of the State Government through its various officers. The 2nd and the 3rd Respondents are Mahabaleshwar and Panchgani Municipal Council respectively, both governed under the Maharashtra Municipal Councils, Nagar Panchayat and Industrial Townships Act, 1965 (also referred as Maharashtra Municipalities Act). The 4th Respondent is the Collector of Satara. The 5th Respondent is Union of India through the Secretary, Ministry of Environment and Forests.

(ii) Certain private parties are also joined as respondents. The 6th Respondent is a company by name M/s Desai Brothers Limited. The 7th Respondent is one Mr.J.S. Billimoria. The 6th and 7th Respondents are

the owners of plots of land in Mahabaleshwar known as "The Oaks" and "The Malcolm Cottage" bearing City Survey Nos.193 and 194 respectively. The 8th Respondent is one Mr.Avinash Bhosale, who is supposed to be the owner of another property known as "Four Oaks". The 8th Respondent claims that it is the 9th Respondent, a development company, which is the owner of that property which is situated at Survey No.14 on Mahabaleshwar-Satara Road. Respondent No.9A is a representative body of the hoteliers in Mahabaleshwar. The 11th Respondent is a property known as Hotel Arya and the 12th Respondent is another property known as Hotel Rajesh. The Respondents No.6 to 9 and 11 and 12 are stated to have effected certain constructions in violation of the bye-laws regulating the development in these Hill Stations. Respondent No.13 is an Association of traders carrying on their activities at the table land at Panchgani.

(iii) The Petitioners have taken out a substantive Civil Application bearing No.2244 of 2004 in this writ petition seeking certain additional prayers. Apart from the Respondents to the main writ petition, Maharashtra Pollution Control Board (MPCB) and the Maharashtra Jeevan Pradhikaran (Maharashtra Water Supply Board) are also joined as Respondents therein. The MPCB is a body corporate constituted under section 4 of the Water

(Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as "the Water Act").

(iv) Some of the individual parties affected or likely to be affected by the prayers in this writ petition and Civil Application No.2244 of 2004 have taken out separate civil applications to protect their interests.

(v) We will deal with the main writ petition and Civil Application No.2244 of 2004 together. The civil applications by the private parties will be dealt with separately.

3. The 1st Petitioner herein had filed one writ petition earlier bearing Writ Petition No.2754 of 1997, which came to be disposed of by a judgment and order dated 18th November 1998 passed by a Division Bench presided over by the then Chief Justice M.B. Shah and Radhakrishnan J. Various directions for protection of the environmental in Mahabaleshwar and Panchgani were issued while disposing of that writ petition. The grievance in that petition was that large scale illegal construction activities and deforestation was going on in Mahabaleshwar-Panchgani area resulting in widespread environment and ecological problems. The Regional Plan for that area for the years 1984-2001 was already in

vogue and their provisions were claimed to have been violated as also those of the Building Bye-laws and the Development Control Rules.

4. A Committee came to be appointed during the course of that petition under one Shri Arun Bhatia, the then Commissioner of Pune Revenue Division, to find out as to whether any such illegal construction and deforestation and violations of various provisions, as stated above, were going on. The Committee submitted its report on 17th November 1997. The Committee identified more than 1000 buildings and other violations in that region and suggested some remedial measures. The Division Bench by an interim order pressed into service sections 24 and 25 of the Water Act and directed the Maharashtra Pollution Control Board to take immediate steps to stop the discharge of all polluted water into Venna Lake in Mahabaleshwar. The Court directed the Mahabaleshwar Municipal Council to take action against those who were carrying on the activities in violation of sanctioned plans and various legal provisions. A statement was made by the learned Advocate General on behalf of various authorities of the State of Maharashtra that on the basis of the report of this Court appointed Committee, show cause notices will be issued to the concerned persons who had committed various breaches of bye-laws and action will be taken

against them.

5. While disposing of the petition, the Division Bench appointed a Monitoring Committee comprising of 5 persons, viz. (1) Deputy Conservator of Satara, (2) Sub-Divisional Officer, Satara, and three environmentalists, i.e. (3) Dr.Farrokh Wadia, (4) Col. Mohite, and (5) Sujeet Patwardhan. On 19th September 2005, one Mr.V.D. Kulkarni, Retired Deputy Director of Town Planning was added as a member. The role of the Committee was to monitor the developments within Mahabaleshwar-Panchgani region so as to ensure that all development and/or construction within the region is carried out in accordance with law. The Committee was empowered to bring to the notice of the statutory authorities any such irregularities or illegalities either on its own or on receipt of complaints from the citizens. The statutory authorities were directed to adopt necessary proceedings or measures on receiving the complaints from the Monitoring Committee. The petition was thereafter disposed of with further appropriate directions.

6. It is the case of the Petitioners that in spite of these measures initiated under the orders of the High Court, no appropriate actions were being taken. This writ petition was therefore filed in October 2002 and

has been treated as a Public Interest Litigation. It has been amended from time to time and some of the Respondents have been added thereto. There have been two reports of the Monitoring Committee in the meanwhile; one was an interim report of 15th January 2001 and then the subsequent final report of 16th February 2004. Civil Application No.2244 of 2004 is taken out on 10th September 2004 for enforcing the recommendations of the Monitoring Committee though it has various other prayers also.

7. (i) Before we deal with the prayers in the writ petition as well as Civil Application No.2244 of 2004, we may note that during the pendency of this Petition as well as the Civil Application, various orders have been passed in furtherance of these prayers. Reference will be made to them as and when the occasion arises.

(ii) As far as the main petition is concerned, prayer (a) is to seek a direction to constitute a Heritage Conservation Committee. This Committee has already been appointed and, therefore, this prayer no longer survives.

(iii) Prayer (b) of this petition is to seek a direction to demolish forthwith the unauthorised constructions in the Mahabaleshwar-Panchgani area, and

particularly those in violation of the building bye-laws, some of which have been enumerated in the Bhatia Committee Report. As far as this prayer is concerned, it makes a specific mention of the illegal construction in the properties known as The Oaks and Malcolm Cottage, which are owned by Respondents No.6 and 7. This prayer clause refers to another property "Four Oaks" which is owned by Respondents No.8 and 9. Prayers (f) to (k) of Civil Application No.2244 of 2004 are also about the illegal constructions and prayer (k)(i) and (ii) thereof are directed against the Arya Hotel and prayer (k)(iii) is directed against Hotel Rajesh. These prayers will have to be gone into specifically.

(iv) Prayers (c)(iii) to (c)(xi) of the writ petition are also concerned with the prayer of demolition of illegal constructions. Prayer (c)(iii) prays that the building bye-laws be followed strictly. Prayer (c)(iv) is that the illegal constructions be removed. Prayers (c)(v) to (xi) are about various particulars with respect to these illegal constructions. Prayer (c)(xi) seeks more powers to this Monitoring Committee in this behalf.

(v) Prayer (c) of the main petition is to seek an order that all the proceedings relating to these developments, that have been or under the investigation

by the Monitoring Committee, be heard only by the High Court.

8. Prayer (c)(i) of the writ petition is to publish the Final Heritage List of the heritage buildings as per Regulation 3 of the Draft Heritage Resolution. Prayer (c)(ii) is to cancel the deletions from the Heritage List which was made by a Committee earlier known as Shri Surve Committee.

9. (i) As far as **Civil Application No.2244 of 2004** is concerned, some of the prayers have been mentioned while referring to the prayers of the main petition. The other prayers of this Civil Application are somewhat repetitive.

(ii) Prayers (a) and (a)(i) are to implement the recommendations of the High Court Monitoring Committee with respect to forests.

(iii) Prayer (d) is to direct the Mahabaleshwar and Panchgani Municipal Council to implement the Municipal Solid Waste (Management and Handling Rules, 2000. Prayer (d)(i) is a prayer directed against Respondent No.10 to the Civil Application, i.e. Maharashtra Pollution Control Board to forthwith take steps in law, including under the Environment (Protection) Act, 1986,

Water (Prevention & Control of Pollution) Act, 1974 and the Municipal Solid Waste (Management and Handling) Rules, 2000 to ensure that all discharge of untreated effluent and solid waste in Mahabaleshwar and Panchgani is forthwith stopped. The prayers upto prayer (d)(vi) are concerning the sewage treatment plant which these bodies are supposed to set up. Orders have been passed by this Court during the pendency of this writ petition on 15th June 2006 read with earlier order of 19th September 2005 and some steps are already initiated though effective supervision in that behalf is necessary.

10. Prayer (e) of this Civil Application is concerning the protection of the Panchgani Table Land. With respect to this prayer appropriate directions have already been given during the pendency of this petition on 1st March 2006, 4th May 2006 and 15th June 2006. The shopkeepers and the traders association were heard and they were directed to be removed out of it and vehicles are not to be permitted thereon. A barricade is also directed to be put up to separate the table land from the area where the shops are to be relocated. The Panchgani Municipal Council has initiated the necessary steps in this behalf.

11. Prayer (l) of Civil Application No.2244 of 2004

is to take action against the illegal constructions in areas known as Jijamata and Munawwar Cooperative Housing Societies and to implement the orders passed by the High Court on 8th November 1998. It may be noted at this stage that as far as these societies are concerned, they are societies formed by members from weaker sections of the community. The breaches in their constructions have also to be attended, but the Petitioners have very fairly stated that they are not so much after those breaches. Last, but not the least, prayers (m) to (t) of the Civil Application are regarding the work of the Monitoring Committee and appropriate remuneration being given to the members of the Monitoring Committee.

ECO-SENSITIVE NOTIFICATION:

12. Before we deal with the prayers, we must mention that this Mahabaleshwar-Panchgani area has come to be notified as an eco-sensitive region by a notification dated 19th January 2001 issued by the Central Government. That has been so done after inviting objections or suggestions and by issuing a notification section 3(1) read with section 3(2)(v) of the Environment (Protection) Act, 1986 and by exercising the powers under Rule 5(3)(d) of the Environment Protection Rules, 1986. It has therefore been directed that all activities in the forests, both within and outside the municipal areas, shall be governed by the provisions of

the Indian Forest Act, 1927 and Forest Conservation Act, 1980. All activities in the sanctuaries and national parks will be governed by the Wild Life (Protection) Act, 1972. Thereafter, the notification has laid down in para 2 thereof that the activities as mentioned therein will be regulated in the eco-sensitive zone in the manner specified. They are:

(a) A zonal master plan will be created and it will demarcate all existing forests, green areas, etc. There will be a sub-zonal master plan for the areas within and outside Mahabaleshwar-Panchgani Municipal areas and which is to be prepared by the State Government as a component of the zonal master plan. The State Government has to prepare a plan for the entire zone which will be a master plan for the area. It has to be approved by the Ministry of Environment and Forests of the Government of India.

(b) Industrial units will be only in the designated industrial area as per the guidelines laid down by the Government of Maharashtra and Ministry of Environment. Only non-polluting, non-hazardous service industries as are mentioned therein and other industries such as units making footwear from leather, horticulture, floriculture and agro-based industries will be permitted.

(c) Quarrying and mining in these areas shall remain banned.

(d) There will be no felling of trees, whether on forest, government, revenue or private land, without the prior permission of the State Government.

(e) Tourism activities will be as per the tourism master plan.

(f) Natural heritage sites particularly of rock formation, water fall, etc. will be preserved.

(g) Man-made heritage - building structures, artefacts of historical, architectural, aesthetical value will be identified.

(h) Development or construction activities at or around heritage site shall be regulated in accordance with the Draft Model Resolution for conservation of natural and man-made heritage.

(i) Extraction of ground water will be permitted only for bonafide agricultural consumption.

(j) Use of plastics in the zone will be regulated by the Monitoring Committee.

(k) The master plan will indicate areas on hill slopes where construction will not be permitted.

(l) Discharge of any untreated effluent in the eco-sensitive zone will be prohibited.

(m) The local authorities will draw up plan for the segregation of solid waste in the biodegradable, non-biodegradable plants and they will be appropriately treated.

13. (i) Para 3 of this notification declared that the Government of India will constitute a High Level Monitoring Committee to ensure compliance with the provisions of this notification. The said Committee will also have the power to regulate and control noise pollution, regulate the traffic and some such other powers. This Committee will have the power to file complaints under section 19 of the Environment (Protection) Act, 1986.

(ii) Para 4 of this notification further laid down that in exercise of power under section 3(3) of the Environment (Protection) Act read with section 23 thereof, the Ministry of Environment and Forests, Government of India had empowered the Urban Land

Department, Government of Maharashtra and High Level Monitoring Committee to discharge the functions specifically enumerated in the notification except those which are required to be performed by the Central Government under the provisions of Environment Impact Assessment Notification.

(iii) It is material to note in this connection that section 5 of the Environment (Protection) Act grants power to the Central Government to issue directions in writing to any person, officer or any authority, and such person, officer or authority are bound to comply with those directions. The section further states in the explanation that the power to direct includes (a) the power to direct closure, prohibition or regulation of a industry, operation or process, (b) stoppage or regulation of the supply of electricity or water or any service.

(iv) The Central Government did appoint a Committee by exercising its powers, as pointed out above. The Committee was appointed on 29th October 2001, but its life expired on 29th January 2005. This Committee had the power with respect to ground water, namely that no ground water will be sold except with the prior permission of this Monitoring Committee. Under clause 3(a), as we have seen above, the Committee had some

power with respect to noise pollution and traffic. It has however not been placed before us as to what control this Committee has exercised throughout its life. The Committee has become extinct after its life getting expired.

14. Though we have enumerated the prayers in the petition, the same can be grouped into certain sub-groups such - (a) protection of the heritage structures, (b) protection of the forests, (c) management of the solid waste and treatment of the sewage, and (d) violation of the building bye-laws and illegal constructions.

15. **Protection of heritage structures**: As far as heritage structures are concerned, deletion from the original list has subsequently been corrected and now the Petitioners have no particular grievance on that count. The only thing required to be directed is that the heritage structures, as notified by the Surve Committee, ought to be protected and necessary steps in accordance with law ought to be taken concerning therewith. We hope and direct that the authorities of the municipal bodies as well as the State Government to see to it that the heritage structures are retained with their aesthetic value.

16. **Protection of the forests**: As far as the forests conservation is concerned, directions have already been given and the mapping of the forests has already started. A survey of the forest was directed under the judgment and order dated 18th November 1998. Thereafter there was an order passed on 11th March 2004 in the present petition also. The marking has to be done on the ground level as well as on the charts. The orders passed in this matter earlier have recorded that the process has started and the authorities of the State Government have assured that the mapping will be completed by end of October 2006. We hope and expect that these guidelines will be maintained so that we get the picture of the forest in this eco-sensitive zone at the earliest. This is necessary from the point of view of forest conservation and all authorities must complete the task with all seriousness. A submission was raised with respect to the Maharashtra Private Forest (Acquisition) Act, 1975 and it was stated that some of the forests are in some private properties. This difficulty need not detain us any longer inasmuch as in para 4 of the judgment in the case of **T.N. Godavarman v. Union of India - AIR 1997 SC 1228**, it has already been held that Forest Conservation Act, 1980 applies to all forests irrespective of the nature of ownership or classification thereof. The Act has been passed to check further deforestation and one of the steps

required is the mapping of the forests. The mapping of all such forests will also have to be done and there should be no hindrance from the owners of the private properties in that behalf. This is only to create a record of the forests which exists in this region so that it is ultimately protected and conserved. We direct that the mapping be completed by end of October 2006 as assured and the certified copies will be supplied by the District Inspector of Land Records when sought by the Petitioners or other citizens. The demarcation of the forests on ground also will have to be completed and we direct the authorities of the State Government to complete it by end of December 2006.

17. **Management of the solid waste and treatment of the sewage**: The two hill stations of Mahabaleshwar and Panchgani are situated on a plateau and the stable population of the two hill station is quite substantial. As per the Regional Plan Report, the population of the two hill stations in 2001 was 56,699 (page 73 of the report). In Panchgani, a large number of boarding schools are situated. We are told that during the summer and each of the other seasons, about a lakh of people visit these two hill stations since they are the major hill stations to nearby metropolitan cities of Mumbai and Pune. Consequently substantial quantity of garbage of variety of types is generated which includes

plastic bottles, tins and even bio-medical waste. All these have got to be properly treated, managed and destroyed. Similarly, the sewage generated has also got to be treated. The Maharashtra Pollution Control Board has filed two affidavits in Civil Application No.2244 of 2005. The first one was filed by one Shri J.B. Sangewar, Sub-Regional Officer for Satara affirmed on 13th January 2005 and the second one by Shri P.P. Nanduskar, Principal Scientific Officer of M.P.C.B. affirmed on 10th July 2006. In the first affidavit affirmed by Shri Sangewar, it is stated that the Panchgani and Mahabaleshwar Municipal Councils are discharging 1300 and 2660 totalling to 3960 cubic meters per day of untreated sewage and that goes into open valley. It enters directly or indirectly into nearby lakes or rivers and Koyna backwaters.

18. In view of this state of affairs, it has been felt necessary that both these Municipal Councils ought to have appropriate treatment plants and, in any case, until these plants come up, the hoteliers ought to have their own treatment facility. As far as the treatment plants by the Municipal Councils are concerned, the facilities are extremely abysmal. They have assured the courts from time to time and different deadlines have been set up as per their assurances, but the treatment plants have not come up. It is their duty as the

Municipal Bodies under section 49(3)(j) and (l) of the Maharashtra Municipal Councils Act (supra) to see to it that the environment does not get polluted and the sewage is treated. This is all the more distressing since there is no serious problem of funds. This is because both these Municipal Bodies are collecting what is known as the pollution cess or tax and we are told that the amounts collected are over Rs.5 crores. The Maharashtra Pollution Control Board (MPCB) has impressed upon both these Bodies in that behalf from time to time. That also had no effect. There is a responsibility on the Pollution Control Board as well as the Municipal Bodies and the State and the Central Government also in this behalf. Under clause (l) of the Eco-sensitive Notification dated 17th January 2001, it has been specifically provided as follows with respect to discharge of effluents:

> "The discharge of any untreated effluent is prohibited within the eco-sensitive zone. No effluent either treated or untreated shall be permitted to be discharged into water bodies and water sources within the zone."

In para 1 of Shri Sangewar’s affidavit, he has in clear terms stated that 3960 cubic meters per day of untreated sewage is being discharged in open valley and that it

gets directly or indirectly entered into the nearby lakes or rivers. It is relevant to note that by its order dated 14th January 1998 and later on on 18th November 1998 in the earlier Writ Petition No.2754 of 1998, this Court had noticed this fact and directed the Pollution Control Board to take immediate action under Water (Prevention and Control of Pollution) Act, 1974. Similar directions were given to the Collector of Satara and Mahabaleshwar Municipal Council.

19. It appears that first action taken in this behalf was a survey conducted by MPCB. and inspection through its Sub-Regional Office in October 2004. The survey showed that both the Municipal Councils have inadequate and partial connection of sewage lines and do not have any sewage treatment plant and, as stated above, some 3960 cubic meters per day of sewage was being discharged into the valley without any treatment. This was followed by notices issued by MPCB to 211 institutions including hoteliers in Mahabaleshwar and Panchgani pointing out to them that they were not having any treatment facilities and their domestic effluents and solid wastes were being disposed off in an unscientific and unhygienic manner. By the notice dated 1st January 2005, they were called upon to obtain consent of MPCB to operate appropriate facility on or before 31st April 2005. They were expected to provide

STP and waste processing facility either individually or along with other hotels to achieve the standards laid down under the Environment (Protection) Act and the Rules by 30th June 2005. The relevant parameters are laid down under Schedule II of the Environment (Protection) Rules read with Rule 3(3A) thereof and the authority of the Pollution Control Board to inspect the sewage effluents and to insist on regulatory treatment is under section 17(f) of the Water Act. This Rule 3(3A) reads as follows:-

> **"3. Standards for emission or discharge of environmental pollutants**.-
>
> (1) .....
>
> (2) .....
>
> (3) .....
>
> (3A) (i) Notwithstanding anything contained in sub-rules (1) and (2), on and from the 1st day of January, 1994, emission or discharge of environmental pollutants from the industries, operations or processes other than those industries, operations or processes for which standards have been specified in Schedule I shall not exceed the relevant parameters and standards specified in Schedule VI.

Provided that the State Boards may specify more stringent standards for the relevant parameters with respect to specific industry or locations after recording reasons thereof in writing;

(ii) The State Board shall while enforcing the standards specified in Schedule VI follow the guidelines specified in Annexures I and II of that Schedule."

Section 17(1)(f) of the Water Act on the function of the MPCB reads as follows:-

"17. Functions of State Board.- (1) Subject to the provisions of this Act, the functions of a State Board shall be-

(f) to inspect sewage or trade effluents, works and plants for the treatment of sewage and trade effluents and to review plans, specifications or other data relating to plants set up for the treatment of water, works for the purification thereof and the system for the disposal of sewage or trade effluents or in connection with the grant of any consent as required by this Act."

Similar notices were issued to the two Municipal Councils also, but that too had no effect. MPCB was therefore of the view that unless coercive measures were resorted to and legal actions were taken, the situation will not improve. In fact, it can direct the stoppage of water and power supply of the polluting industries under section 33A of the Water Act and there can be no dispute that hotels are industries. This section reads as follows:-

> **"33A. Power to give directions**- Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.
>
> Explanation: For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct-
>
> (a) the closure, prohibition or regulation of

any industry, operation or process; or

(b) the stoppage or regulation of supply of electricity, water or any other service."

20. M.P.C.B. noted as per its affidavit dated 10th June 2005 that the number of defaulting hotels were 114 in Mahabaleshwar and 46 in Panchgani. Notices were also issued to non-complying educational institutions to comply by 20th June 2005. By 1st July 2005, some 109 hotels applied for consent, whereas 76 did not. By 10th August 2005, further 37 hotels applied for consent though 39 did not. Some of the hoteliers filed an affidavit saying that they had connected themselves to the sewage pipelines of the Municipal Council. That is of no use inasmuch as there is no treatment plant at the end of the pipeline. The primary responsibility is of the hotelier or the educational institution or any other institution to see to it that its effluent is as per the norms. If in spite of these notices, effluents continue to be not up to the mark, the eco-sensitive zone will continue to be in danger. This is in spite of various orders and notifications of the Central Government and of this High Court from time to time.

21. There is a power vested in the Central Government also under section 5 of the Environment

(Protection) Act to disconnect water and electricity supply to such erring institutions. We are told that this power is to be exercised by the High Level Monitoring Committee of the Central Government. As noted by us earlier, the Monitoring Committee was once constituted, but its life has expired and no new committee has been appointed. Mr.Desai, learned Additional Solicitor General, has assured that the new committee will be set up within one month. We expect it to be set up in any case by end of December 2006 by issuing the necessary notification. MPCB conducts its survey from time to time and we are told that the next survey will be in the first half of January 2007. The MPCB will submit its report to the committee to be appointed by the Central Government and the High Court appointed Monitoring Committee, and if the effluents are not up to the mark, even at that time, the Monitoring Committee under section 5 of the Environment (Protection) Act will be expected to disconnect the water supply to such commercial institutions (though excluding hospitals and educational institutions as observed in its order by earlier Division Bench). It is no use for the Central Government merely to issue a eco-sensitive notification. It has got the power and the teeth to implement it. It is meaningless to issue any such notification if they are not to be enforced. In view of the statement made by the learned Additional

Solicitor General, we expect and direct such committee, when set up, to forthwith act on the report being submitted by MPCB. In any case, the MPCB itself has this power and it has the duty to direct the erring industries to close down and it must proceed in exercise of its own powers without waiting for the Central Government to act. This direction will apply to all the hotels and industries. However, when it comes to restaurants (without any residential facility) and shops, the MPCB may not rush to disconnect power and water supply till they are connected with the municipal sewage lines. This is only because they are small units and it may not be possible for them to have their own treatment facility though they will certainly have appropriate septic tanks.

22. Then there is the problem of setting up of the treatment plant. In this behalf, there has been no progress whatsoever though assurances have been given from time to time. As far as Panchgani is concerned, Mrs.Mahashabde, learned counsel appearing for the MPCB, pointed out that there is one plant existing in Panchgani, but it is not upto the mark and is not adequate to cover and treat the entire sewage. We are told that against an estimated sewage of 1300 cubic meters per day in Panchgani, its treatment capacity is hardly 600 cubic meters and it does not function

properly. It is the responsibility of the Municipal Body to have the appropriate treatment plant for the entire capacity. Just as the hoteliers and the institutions must suffer, if they do not have the treatment facility or their effluents do not meet the norms, similarly the Municipal Council must also suffer. We grant a period of 6 months to the Municipal Council of Panchgani, i.e. until end of May 2007, to see to it that its treatment plant works to its full capacity and it works efficiently, failing which it will be open to the State Government to take appropriate action, including, if necessary, to supersede the Municipal Council and get the work done through an Administrator.

23. The position is worse as far as Mahabaleshwar is concerned, since there is no treatment plant at all. With a view to facilitate the setting up of the treatment plant, the Court tried to find out the difficulties and to coordinate the activities of various agencies involved. At an earlier point of time, the Division Bench of the then Chief Justice Mr. Justice Dalveer Bhandari and Vazifdar, J. were assured and they directed that the treatment plants will be set up and the Bench directed them to become operational by 31st January 2006. This is recorded in its order dated 19th September 2005. In fact, in para 7 the Court recorded that Mr.Anturkar, learned counsel for Mahabaleshwar

Municipal Council, submitted on instructions that on the next date he will submit entire phasewise plan and the work will be initiated within four weeks from the date of that order. Nothing of the kind has happened though more than one year has gone by now. This Bench was finally told that a plot of land bearing Compartment No.41 belonging to one Madhusagar Cooperative Society and another on Compartment No.79 were selected for setting up the plants, but steps are not yet finalised to take possession thereof. As far as the plot belonging to Madhusagar Cooperative Society is concerned, we are told that discussions are going on with the said Society and the Mahabaleshwar Municipal Council will acquire it by negotiations though after the permission of the State Government. As far as Compartment No.79 is concerned, it belongs to the State Government. Appropriate correspondence has been entered into with the Chief Conservator of Forests at Nagpur, who is an officer of the Central Government, and Mr.Nargolkar, learned A.G.P. has shown us the documents evidencing that the State Government's proposal with all particulars has reached the Chief Conservator's office in Nagpur on 7th September 2006 seeking the release of the concerned plots. Thus one of these plots belongs to a cooperative society and the other to the State Government. Third one belonging to the State Government bearing Compartment No.90 on Survey Nos.94 and 95 is

sought for solid waste dumping and treatment. Chief Conservator of Forests is required to look into the proposal and give its approval at the earliest. Mr.Khambata, learned Senior Counsel appearing for the Petitioners, submitted that there are hardly any trees on these parcels of land, which submission was supported by Mr.Anturkar for the Mahabaleshwar Municipal Council and Mr.Nargolkar, A.G.P. on instructions. Mr.Anturkar and Mr.Nargolkar submitted that no other suitable and convenient plots owned by the Municipal Council were avilable. Mr.Desai, learned Additional Solicitor General, stated that the Chief Conservator of Forests will have to ascertain this position and that no other plot is available and then only he may recommend release of the plots for the purpose of setting up of these treatment plants.

24. Having noted the developments as stated above, we must observe that the attitude of the Municipal Council has been extremely lethargic and casual to say the least. Similarly, as far as the Chief Conservator of Forests is concerned, we expect him not to act in a bureaucratic manner. If required, he may send a Competent Officer to the concerned plot of land and seek a report. These plots have been selected after good deliberations and also a discussion in the Court and it appears that Madhusagar Cooperative Society and the

State Government have no particular objection. What is more important is that the effluents and the sewage ought to be treated and should not be allowed to flow into the valley which is causing serious damage to the eco-sensitive zone clearly in conflict with the Central Government's own notification dated 17th January 2001. The Central Government created an authority under section 5 of the Environment (Protection) Act. Nothing has been pointed out as to what steps have been taken by this authority, whose life has now expired. In view of the present petition, we are now being told that the particular High Level Committee will be again set up within a month and we expect it to be set up in any case by end of December 2006. If Central Government is serious enough about protection of environment, we expect the Chief Conservator of Forests to give his approval to the release of these plots at the earliest after examining all necessary aspects and in any case by end of November 2006. Mr.Anturkar appearing for the Mahabaleshwar Municipal Council has placed before us a decision of the Municipal Council signed by its Chief Officer recording that the STP will be set up within 6 months after the possession is obtained. Accordingly, we direct the Mahabaleshwar Municipal Council to set up the STP and make these plants functional by end of 6 months, failing which it will be expected of the State Government to take appropriate steps, as stated earlier

even to the extent of supersession and appointment of an Administrator, and then get the plants set up and make them operational. The State Government has this power under section 313 of the Maharashtra Municipal Councils Act. It is the duty of the Municipal Body under section 49(3)(j) & (l) of the said Act to have proper sewage lines and to maintain an appropriate facility for treatment and disposal of sewage, and failure to act can invite action of supersession from the State Government under section 313 of the said Act after following the necessary due procedure.

25. As we have seen from the discussions above, all the authorities concerned are merely talking about protecting the environment and the eco-sensitive zone, but hardly any effective and coordinated steps are being taken. It is only because of the efforts taken by the Petitioners that perhaps the treatment plants will come up by end of 6 months and the effluents of the hoteliers and other institutions will be upto the mark even earlier by end of January 2006. All of them, including hoteliers, must appreciate that they are going to suffer if the environment is not protected by them and it is in their own interest that these steps, as directed, ought to be implemented.

26. This order takes care of the Civil Application

moved by the hoteliers such as Hotel Pratap and others, which have taken out Civil Application Nos.11, 12, 14, 15, 16 and 17 of 2006. We have heard their counsel. They fear that MPCB may seal their hotels. Mrs. Mahashabde informs us that these hoteliers can put up sceptic tanks which can be operational in one month. We give them longer time till end of December 2006 when they must do the needful and their effluents when checked in January 2007 must conform to the norms, failing which MPCB will take necessary steps in January 2007.

GRIEVANCES AGAINST THE PROPERTY OWNERS ON VIOLATION OF BUILDING BYE-LAWS AND ILLEGAL CONSTRUCTIONS:

27. (i) The Petitioners are relying upon the report of the High Court appointed Monitoring Committee and are submitting that it covers only a few of the illegal constructions and there is a general lack of demolitions from 1998 onwards. Their second submission is that a permission for renovation or repairs is misused for putting up a new construction. Their third grievance is that whereas in residential areas only one main structure is permitted, in certain plots more than one structures are put up. The submissions of the Petitioners are principally based on interpretation of

Bye-law Nos.15, 19.4.1(a), 19.4.2(c) and 20.3.1(a) & (b).

(ii) Thus, Bye-law 19.4.1(a) provides that except in Sector No.1 Survey No.52 (which is for low income, economically weaker section housing), minimum size of the plot on Mahabaleshwar Plateau shall be 0.4 hectare which is equal to 1 acre. Clause 19.4.2(c) provides that for other types of buildings like educational, business, mercantile and industrial, assembly hall etc., the minimum plot size shall also be 0.4 hectare. However, it provides that regulation in respect of minimum plot size may be released for special type of buildings with special approval in Urban Development Department. Thus, when it comes to educational, business, mercantile and industrial user, assembly hall, though the minimum size of the plot is 0.4 hectare, the regulation can be relaxed and the plot can be a smaller one. Otherwise, except for the economically weaker section, which is to be housed in Sector No.52, all other plots have to be of 0.4 hectare. This is the provision in Bye-law 19.4 which is concerning Layout of plots.

28. Part I of these Bye-laws and Development Control Rules is on Administration and it gives the definitions and provisions regarding building permit, completion

certificate and occupancy certificate. This part includes Bye-law 15 which is on unsafe building, which reads as follows:

> **"15. Unsafe Building**:
>
> 15.1 The provision of section 195 of Maharashtra Municipalities Act, 1965 shall apply for all unsafe buildings, which shall be considered to constitute danger to public safety and for restoration by repairs or demolition or other sanctions as directed by the Authority."

29. Part II of the Bye-laws is on General Building Requirements. This part provides for requirements such as the building site, distance of electricity lines, means of access, rules for sub-division and layout, open spaces and then about layout of plots in Bye-law 19.4, which has been mentioned above, namely that the minimum plot size for residential purposes will be 0.4 hectare. Then Bye-law 20.3.1, which is on residential building, provides as follows in clauses (A) and (B) thereof.

> **"20.3.1 Residential Building**:
>
> (A) In 0.4 Ha. plot zone (a) Maximum built up area shall not be more than 12.5% (b) Maximum vertical expansion permissible shall be not more than ground plus one storey and maximum floor

space index shall be .15, (c) Minimum open space all around the building between walls of the building and the building and the periphery of the plot shall not be less than 6 m (d) the minimum clear distance between the main building and any subsidiary out-house, garage, constructed in the same plot shall not be less than 6 m. The main subsidiary building may be permitted to be connected by a covered corridor.

(B) Only one main building together with such out-house, garages, etc. as are reasonably required for the domestic use and enjoyment of the occupants of such main building and their domestic servants and which shall not be separately let out, shall be permitted to be created in any plot. Such subsidiary structures shall be of ground floor constructions with height restriction of 4.5 m."

30. It is therefore submitted by the Petitioners that when a residential building is to be constructed, which is in a 0.4 hectare plot zone, the bye-law provides that the maximum vertical expanse shall be not more than ground plus one floor and the F.S.I. will be 0.15 only. In sub-clause (B), it is provided that on such a plot, there will be only one main building, and

another out-house, garage, etc. may be permitted as reasonably required for domestic use and enjoyment of the occupants of the main building and their domestic services, but they are not to be separately let out. It is further stated that these subsidiary structures will be of ground floor level only. The Petitioners therefore submits that whenever any new construction is to come up, it has got to abide by this Bye-law 20.3.1. In their submission, the only exception to this are the unsafe buildings, for which the earlier mentioned Bye-law 15 applies. This bye-law provides that where a building is unsafe, the provisions of section 195 of the Maharashtra Municipalities Act, 1965 will apply, i.e. where they are dangerous to public safety and then their restoration will be permitted by repairs or demolition or other sanctions as directed by the authorities. The term "authority" has been defined under Bye-law 2.2. to mean an authority which is created by a statute and which for the purposes of administering the bye-law may authorise a committee or an official to act on its behalf. Now, section 195 of the Maharashtra Municipalities Act reads as follows:

> **"195. Removal of buildings, structures etc. which are in ruins or likely to fall**.- (1) If it shall at any time appear to the Chief Officer that any building or other structure or anything

affixed to such building or structure is in a ruinous condition or likely to fall, or in any way dangerous to any person occupying, resorting to or passing by such building or structure or any other structure or place in the neighbourhood thereof, the Chief Officer may, by written notice, require the owner or occupier of such building, structure or thing or do one or more such things and to prevent all causes of danger therefrom.

(2) The Chief Officer may also, if he thinks fit, require the said owner or occupier, by the said notice either forthwith or before proceeding to put down, secure, remove or repair the said building, structure or thing, to set up a proper and sufficient board or fence for the protection of passers by and other persons.

(3) If it appears to the Chief Officer that the danger from a building, structure or thing which is ruinous or about to fall is of hourly imminence, he shall, before giving notice as aforesaid or before the period of notice expires, fence of, take down, secure or repair the said structure or take such steps or cause such work to be executed as may be required to

arrest the danger.

(4) Any expenses incurred by the Chief Officer under sub-section (3) shall be paid by the owner or occupier of the structure and shall be recoverable in the same manner as an amount due on account of a property tax."

31. As is seen from this section, it speaks of a building which has become dangerous either for a resident or a passerby or to the one who is having a resort thereto, i.e. a visitor. The mechanism under that section is for the Municipal Authority to call upon the owner of the building to repair it if it has become ruinous. The Petitioners therefore submit that when one talks about a restoration of an unsafe building under Bye-law 15, it is implied that those who were occupying it earlier ought to be able to occupy it after the repairs or after its demolition and reconstruction as contemplated thereunder. This will mean that the FSI available earlier ought to be available after the restoration. The Petitioners however emphasise that what is contemplated under Bye-law 15 is only a "restoration" though by means of either repair or demolition or other sanction as directed by the authorities. They therefore submit that although it will mean permission to put up a construction to consume

the full FSI, it will have to be essentially a restoration. If it is not a case of restoration, then Bye-law 20.3.1 will apply where the restrictions thereunder will apply, namely

(i) New construction will have to be only ground plus one.

(ii) FSI utilisation will have to be only 0.15.

(iii) There will have to be only one main building with one out-house or a garage as contemplated thereunder.

32. The contention of the Petitioners is that as far as Hotel Rajesh is concerned, what it has done is not a restoration, but it is a new construction and has consumed more FSI than what it had consumed earlier. In Hotel Arya, what is constructed is a ground plus 3 storey building. In The Oaks and Malcolm Cottage, some new structures are constructed when only one structure is permissible as stated above and in Four Oaks also, 3 new structures are stated to have been constructed and earlier building is tried to be explained as an out-house.

33. The question therefore comes up as to what

should be the interpretation of the above referred relevant Bye-laws and as to whether there is any such illegal construction in the above referred four properties and, if so, what should be the direction in that behalf.

RELEVANT DEFINITIONS UNDER THE BYE-LAWS:

34. The answer to all these questions will depend upon the interpretation of the relevant bye-laws. The Building Bye-laws and the Development Control Rules for the Mahabaleshwar Municipal Council have come into force on 1st August 1985 and they are framed under section 323(1) of the Maharashtra Municipal Councils Act in supersession of the earlier bye-laws. Bye-law No.2 contains the definitions. Bye-law 2.9 is on the definition of "development", bye-law 2.27 on "plinth", bye-law 2.28 on "plot", bye-law 2.34 on "storey", bye-law 2.35 on "to erect" and bye-law 2.36 on "unsafe building". These are some important definitions. Clause 3 lays down that the building permit is required for any such construction. Clause 4.1 lays down that anybody intending to carry out development work has to give a notice in advance. Clause 5 lays down the information to be enclosed along with the notice. Bye-laws 3.1 and 4.1 read as follows:-

"3. Building permit required-

1) No person shall carry out development work or erect, re-erect or make material alteration or demolish any building or cause the same to be done without first obtaining a separate building permit, for such each building / development work from the Authority.

4. Notice to be given -

1) Every person who intends to carry out development work or erect, re-erect or make material alteration or demolish any building shall give notice as required in writing to the Authority of such intention in the Form given in Appendix A and the notice shall be accompanied by plans and statement in triplicate drawn or prepared in accordance with Bye-law 5. The plans may be on ordinary drawing paper or prints on ferro paper; ammonia paper, blue print or on tracing cloth. One set of such plans shall be retained in the Municipal local body office for record after issue of permit or refusal."

Bye-law 15 on "Unsafe building" states that the provisions of section 195 of the Maharashtra Municipalities Act will apply to the unsafe buildings. Bye-law 20 is on land use, classification, open spaces area and height limitation. Bye-law 20.3.1 thereof is

on construction of residential buildings. It is submitted on behalf the Petitioners that bye-law 20.3.1 lays down general parameters for construction of residential buildings. In Mahabaleshwar, there are either the very small plots which are situated in Survey No.52 and where the lower income or economically weaker sections housing is provided. All other plots are of the size of 0.4 hectare which is equivalent to 1 acre. Bye-law 20.3.1 lays down that in such a plot there can be FSI utilisation of 0.15 only and the construction has to be ground + 1 and not more. As against that, when Bye-law 15 speaks about unsafe building, and where a restoration is provided either by repairs or demolition, whatever was FSI consumed earlier will be available.

35. (i) As far as the factual aspect is concerned, in Hotel Rajesh, the proprietors very much contend that it is only reconstruction of the old hotel, and, according to them, it is essentially a restoration. It is submitted on their behalf that in fact the FSI utilised is slightly lesser than what it was utilised earlier, and whereas there were 3 buildings earlier, they are now inter-connected and there is only one building. According to them, there is no violation of the relevant bye-laws. They further submit that whereas eco-sensitive zone notification was issued on 17th January 2001, the permission for repairs, which has been

granted to them, was prior and it is after obtaining the opinion of the Assistant Director of Town Planning (ADT).

(ii) As far as Hotel Arya is concerned, it very much disputes that it has put up any such structure of ground plus 3 floors. It is submitted on its behalf that the hotel itself is situated at a height and thereafter that it is having is only ground plus one storey structure though height of each of the floor is almost like two storeys. Photographs are tendered by Mr.Samdani, learned counsel appearing for Hotel Arya, to point out that slabs are placed only above the toilet portion, and that the entire structure is only ground plus one. That apart, this hotel has filed a suit bearing No.69 of 2002 in the Court of Civil Judge at Wai, District Satara, which initially granted an ad-interim injunction, but it was vacated subsequently although the injunction has been restored in Appeal No.230 of 2003 by the District Court. The suit is pending disposal. The proprietors of the hotel have no objection to the suit being heard early though they are not agreeable to the suit being transferred to the High Court. Their submission is that there is no violation of any of the bye-laws. Both the hoteliers have filed their replies. We may however note that according to the Municipal Council, Bye-law 28 required Hotel Arya to maintain its external facade as

it existed earlier and it has failed to maintain the same.

36. As far as "Malcolm Cottage and The Oaks" are concerned, Dr. Tulzapurkar appearing for their owners pointed out that these properties are separately owned and there has been a separation of these properties by resorting to appropriate legal proceedings. He pointed out that in The Oaks, there is only one structure and in Malcolm Cottage also, there is only one structure. One more structure was sought to be put up in the Malcolm Cottage, but presently that construction is halted and is no longer going on. Similarly, with respect to Four Oaks property, he submitted that there is only one main structure though there are some small old 9 structures. According to him, the FSI consumed on all the structures as also the proposed structure do not exceed 0.15% of the area.

37. As far as the reconstruction of Hotel Rajesh and Hotel Arya is concerned, the Assistant Director of Town Planning has filed an affidavit affirmed on 17th February 2006 in Civil Application No.2244 of 2004. As far as the repairs of Hotel Arya are concerned, the affidavit has stated that though the earlier structures had 10 rooms, the plan submitted for repairs showed 12 rooms though on the same plinth area. Thereafter this

affidavit states -

> "As there is no provision for repairs, maintenance, reconstruction in Development Control Regulations of Mahabaleshwar Municipal Council, and considering all opinions, decision was taken that permission may be granted."

He further stated that the application was made for repair of the old Hotel Arya by providing R.C.C. construction. Similarly, with respect to Hotel Rajesh, he has stated that their application was based on a report of the Mahabaleshwar Municipal Council. Their representation for repair and reconstruction was allowed. It is stated in this affidavit that to avoid any hazard to the public, it was decided to allow repairs and reconstruction.

38. Reliance is placed in this behalf on the judgment of the Apex Court in the case of **Live Oak Resort P. Ltd. v. Panchgani Hill Station Municipal Council - AIR 2001 SC 3478**, which is on Bye-law 28.2 of the Panchgani Municipal Council. Bye-law 28.2 of the Panchgani Municipal Council reads as follows:

> "28.2 The Director of Town Planning may permit special relaxation to any of the Bye-laws,

> provided the relaxation sought does not violate the health safety, fire safety, structural safety, public safety of the inhabitants and the building and neighbour."

The Apex Court held that power conferred on the Director under this Bye-law is a superior power and the Municipal Council is under statutory obligation to abide by its direction. As far as the rule with respect to having only one main structure in all properties above 0.4 hectare is concerned, Dr. Tulzapurkar submitted that this was an unreasonable expectation. He submitted that thus Four Oaks was a property of 3 hectares and 35 ares which is equal to 7.5 acres, whereas The Oaks and Malcolm Cottage were properties of 3 hectares and 39 ares which is equivalent to 8 acres. He submitted that the relevant bye-law must be interpreted reasonably and some play in the joints ought to be permitted. This will particularly have to be when it is a delegated legislation, since bye-laws contain regulations which are at best temporary. He relied upon a judgment in the case of **R.B.I. v. Peerless General Finance & Investment Co. Ltd. - AIR 1987 SC 1023**, wherein in para 33 it is observed that interpretation must depend on the text and the context.

39. It was submitted by him that the interpretation

to the bye-law given by the Planning Authority must be accepted since they are the people best suited to understand their own requirement. He relied upon the observations on these lines in **Kruse v. Johnson - 1898 2 QB 91**, which are quoted with approval by the Apex Court in **Trustees of the Port of Madras v. M/s Amichand Pyarelal - (1976) 3 SCC 167**. He disputed the intentions of the Petitioners and criticised their petition for delay. Worse comes to worse, he submitted that whatever interpretation is given by this Court, it should be ordered to have prospective application since it is a fit case for applying the principle of prospective over-ruling. He relied upon the observations of **Sir William Wade on Administrative Law, Eighth Edition, page 691** in this behalf.

40. Mr.Nargolkar, A.G.P. appearing for the State Government, pointed out that Bye-law 28.2 of the Mahabaleshwar Municipal Council Act was same as in Panchgani and as held by the Apex Court in Live Oak Resorts' case (supra), approval of the Director of Town Planning ought to be treated as the decisive factor. Alternatively, he submitted that the bye-laws were expected to undergo a change in very near future. He submitted that the Regional Plan was nearing finalisation and the building bye-laws and Development Control Rules of the Mahabaleshwar Municipal Council

were expected to undergo a change. He submitted that new bye-laws have been drafted. On a direction from the Court, he handed over a copy of the proposed Bye-laws to the Court as well as to the Petitioner though they are pending approval. As far as the restriction of one building for 0.4 hectare plot and above is concerned, he pointed out that in Bye-law 20.3.1B, a proviso was proposed to be added that this restriction will not prevent the erection of two or more buildings/bungalows on the same plot if the plot admeasures at least twice or more times as the case may be. Reliance was placed on the judgment of the Apex Court in the case of **S.N. Rao v. Municipal Corporation - (1988) 1 SCC 586**, to the effect that the draft revised plan, even though not published, may be considered as other relevant material when any decision is to be taken by the Municipal Authorities.

41. Mr.Anturkar, learned counsel appearing for the Mahabaleshwar Municipal Council, submitted that after the receipt of the Bhatia Committee Report, the Mahabaleshwar Municipal Council has taken various steps to demolish the disputed structures. He however submitted that if there are any structures in the societies of the weaker sections or in the gaothan areas and particularly those which existed prior to the bye-laws coming into force, they should be permitted to

seek a relaxation. Mr.Khambata also did not object to this suggestion to the extent such additions or alterations were made in the weaker section houses which are situated in Survey No.52 of the societies like Munawwar or Jijamata Societies and the gaothan areas. He however submitted that there are constructions which are in the nature of farm houses and they cannot be permitted to take advantage of any such lenient attitude. Mr.Anturkar supported the submission of Mr.Khambata that when one speaks of restoration, the external facade of the property ought to be retained as it is. He submitted that this was particularly necessary considering that these constructions were on a hill station.

42. Mr.Khambata, learned counsel for the Petitioners, submitted that what one has to keep in mind is that these are bye-laws concerning the construction of buildings on a hill station. They have got to be looked into and interpreted from that point of view. If the bye-law provided that the FSI will be only 0.15 or that for all plots of sizes above 0.4 hectare, the main structure will be only one, such a bye-law ought to be read as it is. Otherwise, it will mean unjustifiable relaxation. Besides, as far as Bye-law 28.2 is concerned, he submitted that though there is a power of relaxation, it cannot be invoked as an over-riding power

in each and every case. He firstly submitted that there is an element of public trust when some responsibility is cast on the municipal or government officers and if anything is permitted contrary thereto, it will amount to a violation of the public trust doctrine as held by the Apex Court in the context of the municipal laws in U.P. in the case of **M.I. Builders v. Radhey Shyam Sahu - AIR 1999 SC 2468**. This was to submit that Bye-law 28 on relaxation cannot be read as an answer to all problems. He referred to and relied upon a judgment of this Court in **Rajendra Thacker v. Municipal Corporation - (2004) 4 BCR 1**, and particularly para 13 thereof which states that the power of the Municipal Commissioner under Regulation 64B of the Development Control Regulations to grant concession in cases of hardship can be used only in specific case where a clearly demonstrable hardship is caused. However, it cannot be a self-created hardship and while exercising this power, the Municipal Commissioner was expected to take into account all relevant facts. Mr.Khambata also pressed into service the judgment of the Apex Court in **ANZ Grindlays Bank v. Municipal Corporation of Delhi**, which is quoted with approval in **M.C. Mehta v. Union of India - (2006) 3 SCC 399**, to the effect that while interpreting municipal legislation framed in public interest, a strict constitutional approach must be adopted.

43. Mr.Khambata drew our attention to the fact that a provision permitting only one main structure in large plots of land, as in the case of Mahabaleshwar, existed elsewhere also. He drew our attention to bye-laws concerning the Matheran Municipal Council where also there is a similar provision to permit only one structure and the minimum plot size is 0.2 hectare (approx. half acre) as seen in Matheran's Bye- law No.9(I). He pointed out that in the bye-laws of Mahabaleshwar, only ground plus one construction was permitted under Bye-law 20.3.1, whereas in Panchgani, which is an adjoining Municipal Council, there is a specific departure in Bye-law No.5, which permits two storeys. Mr.Khambata therefore submitted that when a specific provision has been made with a clear intention, that must be honoured. He submitted that where statutes use different expression, it must be presumed that the framers had done that consciously with a view to convey different meaning. He relied upon the judgment in the case of **DLF Utap Enclave Complex Educational Trust v. State of Haryana - AIR 2003 SC 1468 (para 40)** and **Commissioner of Income Tax v. East West Import and Export - AIR 1989 SC 36 (para 7)** in support. With respect to the submission on prospective over-ruling, he pointed out that the remedy is available only to the Apex Court under Article 142 of the Constitution as held

in **State of H.P. v. Nupur Private Bus Operators - (1999) 9 SCC 559 (para 12)**. With respect to the term "restoration", he referred to various dictionary meaning on the term "restore", which define it to bring to the original condition, and submitted that in the instant case, full FSI could be available only when it is restoration of an unsafe building.

44. Mr.Desai, learned Additional Solicitor General, submitted that the Central Government having declared Mahabaleshwar and Panchgani has eco-sensitive zone, it was for the Central Government to appoint an appropriate committee to monitor and to take necessary effective action under section 5 of the Environment (Protection) Act. He submitted that the Chief Conservator of Forests has recently received the proposal of the State Government to release the plots for sewage treatment and solid waste management. He will examine it and thereafter decide whether the clearance ought to be granted to the concerned plots. He however submitted that pending finalisation of the Zonal / Sub-zonal Master Plan and the new Bye-laws, which were expected, this Court should not permit any construction or repairs which are contrary to the statutory law and the eco-sensitive notification. He stated that the committee under section 5 of the above Act will be appointed within one month and that this Court may

expect the committee to take necessary steps.

45. Mr.Khambata, on the other hand, submitted that the committee appointed by this Court should be furnished copies of the applications for building constructions to be made hereafter. As far as the committee to be appointed under section 5 of the Environment Protection Act is concerned, he had a few suggestions to make and he submitted a few names for consideration, which included the names of a few environmentalists and a former Judge of the Apex Court, who has offered to make such a commitment. We expect the Central Government to consider these names in all seriousness.

CONCLUDING OBSERVATIONS ON THE DISPUTED CONSTRUCTIONS:

46. We have considered the submissions of all the parties and their counsel on this aspect. As far as the four allegedly disputed constructions are concerned, the disputed construction of Hotel Arya is already under consideration by the Court of Civil Judge at Wai. Although Mr.Khambata has made a request that all such proceedings be transferred to this Court, in our view, it may not be fair to the litigants situated in Mahabaleshwar. There could be many small parties who will be put to difficulties if they are required to come to the High Court for their litigation at the original

stage. As far as the particular suit in the Court at Wai is concerned, Mr.Samdani has made a statement on instructions of the proprietors of Hotel Arya that they have no objection to the suit being heard early. In view of this statement made by Mr.Samdani on behalf of his clients, the plaintiffs in that suit, we request the learned Judge of the Court of Civil Judge at Wai to hear and decide the pending suit at the earliest and preferably by end of March 2007. The Mahabaleshwar Municipal Council can apply to the Trial Court for early hearing on the basis of this order. As far as the alleged violations of Hotel Arya are concerned, though the Petitioners have many things to say, the Defendants have also shown that the construction is of ground plus one storey. There are also many grievances of the Petitioners. It will be open to the Petitioners to apply to the Court of Civil Judge, Junior Division at Wai to join in support of the Municipal Council in that proceeding as intervenors to point out as to how the grievances of the Plaintiffs are not correct and the municipal action was justified.

47. As far as the disputed construction of Hotel Rajesh is concerned, there is a disputed question of fact inasmuch as whereas the Petitioners contend that the work, which has been done, does not fit in the concept of restoration, the owners of the building very

much maintain it. Now, undoubtedly when a building becomes old and is to be reconstructed, it is bound to use new material and new technology. Considering that it is a restoration on a hill station, however, we are inclined to accept the submission of the Petitioners and the Municipal Council that external facade of such a restored structure ought to be as similar to the old one as possible. People visit the hill stations because of the climate over there and the kind of feeling one gets when one is removed from the heavily congested cities which have a highly dense population, heavy traffic and high rise buildings. A part of the intention in visiting a hill station is to go back to the nature. In that, it is the perceived ideas of the visitors with respect to the buildings on hill stations, which dominate. They do not visit the hill station to once again see the same kind of high-rise buildings, traffic jam and the congestion and the polluted atmosphere. It is therefore necessary to maintain the external facade of the structures to the extent possible as they were earlier. However, one cannot extend this idea to any absurdity. At the same time, when one talks about restoration, one cannot ignore the element of going back to the original position implied therein. It will be for the Municipal Council to take necessary steps in that behalf and we do not propose to arrive at any decision on facts merely on the affidavits and

photographs which are tendered to us. This will be best decided in an appropriate civil proceedings if initiated and after an opportunity of leading evidence and cross examination.

48. As far as the applications for restoration hereafter are concerned, we direct that Municipal Council will ask the parties to specifically give applications making a specific statement in that behalf. The Municipal Council will also ask the parties to give the photographs of the external facade of the existing structures. That will enable it to decide as to whether new construction is in accordance therewith or not. Similarly, even with respect to the new constructions, the Municipal Council must insist on the external facade to be in tune with the natural environment on a hill station. However, we can not go into the details thereof and it will be for the authorities to make appropriate provision.

49. As far as the constructions in Malcolm Cottage and The Oaks are concerned, prima facie we do not find anything illegal being done by them today since there is only one structure in either of the properties and no new construction is going on. Similarly, as far as the property Four Oaks is concerned, if there is any such violation, it will be for the Municipal Council to take

necessary steps. It is however not possible to accept the submission of Dr. Tulzapurkar to read anything more in the relevant Bye-law 20.3.1(b). If the properties with 0.4 hectare and above have to have only one main structure, as provided in the Bye-laws of the Mahabaleshwar Municipal Council, we cannot dilute that by saying that more structures will be permitted in larger property. The provisions in the bye-laws of other hill stations are also similar and hence the intention of the rule makers is clear and it will not be proper to deviate therefrom. We however take note of the fact that an amendment of the relevant bye-law is proposed, as pointed out by Mr.Nargolkar, A.G.P. It will be for the Municipal Council to consider it as relevant material (though the plan is not published). Similarly, it is not possible for us to accept the submission of the hoteliers that by restoration, one can do anything. We have to note that it is restoration of a property on a hill station. As stated earlier, the restoration will have to be to the extent possible nearer to the earlier external facade and in that case only, the full FSI will be available and not otherwise.

50. As far as the Table Land at Panchgani is concerned, appropriate orders are already passed and the Municipal Council must implement them in true spirit.

51. In the circumstances, we pass the following order:-

(a) As far as the heritage structures are concerned, we direct implementation of the recommendation of the Heritage Committee.

(b) As far as the forest mapping is concerned, we direct that mapping be completed by end of October 2006 and copies be supplied to the parties by the D.I.L.R. as and when they apply. We further direct that the marking of the forest on the land be completed by end of December 2006.

(c) With respect to plots of land sought by the Municipal Council of Mahabaleshwar for setting up of its treatment plant for effluents, we direct the Municipal Council and the State Government to complete all formalities and further direct the Chief Conservator of Forests, Nagpur to take a decision on the applications at the earliest and, in any case, by end of November 2006. We see no reason as to why the applications should not be granted and the plots being released. The Municipal Council of Mahabaleshwar and the State Government have both

stated that no other plots are available and there are hardly any trees on these plots. We expect and direct the State Government to hand over the possession of the concerned plots forthwith after the decision of the Chief Conservator of Forests. We direct the Municipal Council of Mahabaleshwar to set up the two sewage treatment plants and the solid waste management facility within six months of getting possession as promised by the Municipal Council, i.e. by end of May 2007. In the event the plants and facility are not set up, it will be expected of the State Government to take appropriate action including to supersede the Mahabaleshwar Municipal Council for failure to fulfill its essential obligations under the Maharashtra Municipal Councils Act.

(d) Similarly, Panchgani Municipal Council is directed to upgrade its existing sewage treatment plant and make it functional by end of May 2007, failing which it will be expected of the State Government to take appropriate action including to supersede the Panchgani Municipal Council for failure to fulfill its essential obligations under the Maharashtra Municipal Councils Act.

(e) (i) In the event of any such steps not being taken by the Municipal Councils or leaving them incomplete, the State Government is directed to take all necessary actions to set up the treatment plant / to complete it within 3 months thereafter.

(ii) Apart from what is stated above, we expect the Sub-Regional Officer, MPCB, Satara and Principal Scientific Officer, MPCB to insist on the compliance of these orders. Similarly, we expect the Chief Officer of Panchgani and Mahabaleshwar Municipal Councils and the Chief Conservator of Forests to act as per the time schedule provided, failing which their conduct could be considered as in breach of these orders inviting appropriate consequences.

(f) As far as the hoteliers and the commercial institutions in Mahabaleshwar and Panchgani are concerned, they are directed to have their own treatment facility by end of December 2006. Maharashtra Pollution Control Board is directed to check their effluents in January 2007 and if they do not meet the required standards, it will be expected of MPCB to direct closure of their

activities.

(g) We note the statement of the learned Additional Solicitor General that the Monitoring Committee under section 5 of the Environment (Protection) Act will be set up within one month. We expect the Central Government to set up the committee by end of November 2006. The Central Government may as well consider the names which are suggested by the Petitioners and we strongly recommend the consideration of those names.

(h) The Monitoring Committee appointed by the High Court has done good amount of work and we record our deep appreciation for the efforts taken by the Committee members. The members have spent their own valuable time, energy and money for these visits on transport and stay. The Municipal Council of Mahabaleshwar and Panchgani have collected pollution cess all these years. It is only because of the efforts of such persons that the Environment (Protection) Act and various measures can become meaningful. An amount of Rs.1,00,000/- each is deposited in this Court by the Mahabaleshwar Municipal Council, the Panchgani Municipal Council and the State Government. We direct the Registrar

General of this Court to pay Rs.3,000/- to each of the members for each of the visits that they have made to the hill stations and for the meetings that they have taken and attended. The particulars of their attendance and visits will be certified by the Deputy Conservator of Forests, Satara and accordingly the payments will be cleared within 4 weeks thereafter. The Registrar General will release the amounts to these members on such certificate being produced before him. He will prepare a statement about the amounts released and the remaining in hand and place it on record. Copies thereof will be given to the two Municipal Councils and the Government Pleader for the State. The Committee has made an interim and final report. It will be additionally paid Rs.25,000/- for these reports together.

(i) We do not want to continue the High Court appointed Committee for all the time. However, the setting up of effluent sewage treatment plants and solid waste management facility in both these Municipal Council is absolutely necessary. We therefore request the Committee to continue its work until the time the orders in that behalf are fulfilled and the sewage

pipeline in the two towns are connected thereto. For the time being, it will continue until end of December 2007 with liberty to the Petitioners to apply for extension, if necessary. It will be open to the Committee to make its report from time to time in that behalf.

(j) The Committee will also make a report on the MPCB action regarding the hoteliers. We however add that the expectation to meet these parameters will not be strictly insisted from small Restaurants (which are non-residential) and shopkeepers.

(k) The Committee will be at liberty to visit the Municipal Councils once in a fortnight and on their application, the officer of the Municipal Council will make available the necessary information on applications for constructions whether new or for restoration. It will be open to the Committee to make its reports. The Committee will be reimbursed for these visits and reports at the end of June 2007 and December 2007 in the same manner as above. Registrar General will do the needful in this behalf.

(l) Orders are passed on 1st March 2006, 4th May

2006 and 15th June 2006 to preserve the table land at Panchgani. The Panchgani Municipal Council will implement them scrupulously.

(m) As far as the prayers for demolition of structures on specific properties, i.e. Hotel Arya, Hotel Rajesh, Malcolm Cottage, The Oaks and Four Oaks are concerned, the Mahabaleshwar Municipal Council is expected to act in accordance with the concluding observations contained hereinabove.

(n) Petition and Civil Application No.2244 of 2004 and Civil Application Nos.11, 12, 14, 15, 16 and 17 of 2006 stand disposed of with the above order.

CIVIL APPLICATION NO. 68 OF 2005

. Mr.S.B. Deshmukh has appeared for the Applicants.

. This Civil Application is filed by one Musafirkhana for protection of its property. It will be open to the parties to apply for regularisation and for the Municipal Body to take appropriate decision.

. Civil Application stands disposed of.

CIVIL APPLICATION NO. 73 OF 2005

. Mr.Jagdish Reddy has appeared for the Applicant.

. This Civil Application is taken out for regularisation of the construction on a school building. The Applicant himself is a Municipal Councillor. In utter violation of the bye-laws, he is running a school by putting up a ground plus two storey building. He is directed to close the activities on the second floor of the school by end of the present academic session. The Municipal Council will demolish the second floor at the end thereof and the cost will be recovered from the Applicant.

. Civil Application stands disposed of.

CIVIL APPLICATION NO.3 OF 2006

. Mr.Bodake has appeared for the Applicant. . The Applicant is having her bungalow known as "Hill View Cottage" which is a kind of farm house and construction is alleged to be contravening the law. All that we can say is that the Authority will examine the papers of the Applicant and if there is any violation of the bye-laws, action will be taken in accordance with law.

. Civil Application stands disposed of with the above order.

CIVIL APPLICATION NO. 62 OF 2005

. Mr.R.G. Ketkar has appeared for the Applicant.

. The Applicant is alleged to have carried out unauthorised construction on the terrace of the property. Here also the Authority will examine the papers of the Applicant and will take steps in accordance with law.

. Civil Application stands disposed of.

CIVIL APPLICATION NOS.67 OF 2005

. Mr.Warunjikar has appeared for the Applicants.

. The dispute is whether there is a structure under the basement. The High Court Monitoring Committee was to make a report about it. The Municipal Council will consider the report and act in accordance with law.

. Civil Application stands disposed of.

CIVIL APPLICATION NO. 19 OF 2006

. Mr.N.B. Patil has appeared for the Applicant.

. The Applicant is an occupant of some 100 years old structures. He has also filed Suit No.29 of 2004 in

the Court of Civil Judge at Wai. Any action against him will depend on the decision in that suit.

. Civil Application stands disposed of.

CIVIL APPLICATION NO.29 & 39 OF 2006 AND 56, 64, 72 & 3185 OF 2005 . These Civil Applications are taken out by some of the private parties since they fear action against them. Thus, there are Civil Applications by some of the residents in Jijamata and Munawwar and other weaker group housing societies. Some of the applications are by the villagers from the adjoining villages such as Jaoli. Mr.Dhakephalkar, Senior Advocate, and Mr.Dilip Bodake, Mr.Sugandh Deshmukh and Mr.Tanaji Mahatugde, Advocates have appeared for them. The order which we have passed in the main petition P.I.L. No.39 of 2003, namely permitting them to apply to the Director of Town Planning for relaxation for the structures prior to 1985, will serve their purpose. This will be only in the individual cases of acute hardship, humanitarian ground and for the persons belonging to the economically and socially backward class which will be also on a case to case basis. This benefit however will not apply to the farm houses on the hill stations and the villages around which the Bhatia Committee has objected.

. Civil Applications stand disposed of.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR, J.)